

## OPINION OF THE PUBLIC ACCESS COUNSELOR

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JO ANN SPIETH-SAYLOR,  
*Complainant,*

v.

MILLTOWN TOWN COUNCIL,  
*Respondent.*

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Formal Complaint No.  
20-FC-21

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Milltown Town Council violated the Open Door Law.<sup>1</sup> Attorney David Hutson filed an answer to the complaint on behalf of the council. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on February 13, 2020.

<sup>1</sup> Ind. Code §§ 5-14-1.5-1-8

## **BACKGROUND**

This case involves a dispute about the sufficiency of the public notice provided to the news media regarding two town council executive sessions and whether the council improperly took final action on public business outside of a public meeting.

Jo Ann Spieth-Saylor (Complainant), editor at *The Corydon Democrat*, alleges the Milltown Town Council (Council) failed to provide public notice to the newspaper for two executive sessions the council convened to interview prospective employees on January 30, 2020, and February 4, 2020. Spieth-Saylor contends the newspaper requested individualized notice in 2019 as required by the Open Door Law.

Additionally, Spieth-Saylor contends the Council hired a town marshal without holding a public meeting and the individual was sworn in at a subsequent meeting without a vote on February 10, 2020.

As a result, Spieth-Saylor filed a formal complaint with this office on February 13, 2020.

In response, the Council confirmed that it held the two executive sessions for the purpose of interviewing candidates for town marshal. The Council also concedes to overlooking the public notice to the press. The Council also acknowledges swearing in the new the town marshal at its meeting on February 10, 2020.

On March 19, 2020, the Council filed a supplemental response through its new attorney. The Council argues, in the supplemental response, that it posted public notice for

the executive sessions at town hall prior to the meetings. The Council also notes that the town manager called the newspaper to provide notice of the executive sessions, but the Council acknowledges this is not consistent with the letter of the law. The Council maintains it acted in the spirit of the law.

## ANALYSIS

### 1. The Open Door Law

It is the intent of the Open Door Law (ODL) that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

The Town of Milltown is a public agency for purposes of the ODL; and thus, subject to the law's requirements. Ind. Code § 5-14-1.5-2. The Milltown Town Council (Council) is a governing body of the agency for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). As a result, unless an exception applies, all meetings of the Council must be open at all times to allow members of the public to observe and record.

### 2. Executive session notice

Spieth-Saylor contends that the Council failed to provide her newspaper with public notice of two executive sessions as required by the ODL.

Generally, under the ODL, the governing body of a public agency must provide public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting at least 48 hours—excluding weekends and legal holidays—before the meeting as follows:

The governing body of a public agency shall give public notice by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held.

Ind. Code § 5-14-1.5-5(b)(1). Here, there is no dispute that notice was physically posted at the town hall consistent with the statute. The ODL also requires a governing body to provide the same public notice directly to the news media that deliver an annual written request for notices no later than December 31 of the previous year as follows:

The governing body shall give notice by one (1) of the following methods, which shall be determined by the governing body:

(A) Depositing the notice in the United States mail with postage prepaid.

(B) Transmitting the notice by electronic mail, if the public agency has the capacity to transmit electronic mail.

(C) Transmitting the notice by facsimile (fax).

Ind. Code § 5-14-1.5-5(b)(2). Spieth-Saylor provided confirmation that her publication delivered written request for notices to Milltown on December 19, 2019, thus triggering the above notice requirement. The Council

admits to the oversight in sending the notices to the media, although it initially appeared to mistake media notice for publication. This is not the case. Publication of notice for regular public meetings and executive sessions are not required even when individualized notice to a newspaper is required.

### **3. Subject matter of executive sessions**

Under the ODL, the term “executive session” means “a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.” Ind. Code § 5-14-1.5-2(f).

There exists a heightened requirement for executive session notice and for good reason. While the law allows some latitude to a governing body to meet behind closed doors, the public in turn is entitled to specific notice as to why.

Indiana Code section 5-14-1.5-6.1(d) states:

Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b).

Subsection (b) lists the specific subject matters that are authorized for executive session.

Here, the public notice that prompted this complaint was for the purpose of interviewing prospective employees. The ODL authorizes a governing body to meet in executive session for this purpose. *See* Ind. Code § 5-14-1.5-6.1(b)(5). There is no indication the notice of the executive sessions was deficient.

Critically, however, the Open Door Law is clear that “[a] final action must be taken at a meeting open to the public.” Ind. Code § 5-14-1.5-6.1(c). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. Ind. Code § 5-14-1.5-2(g).

So, while the act of interviewing may take place behind closed doors, the final action of hiring must happen publicly. In a town, the town marshal is appointed directly by the council; and thus, impliedly requires a majority vote. *See* Ind. Code § 36-5-7-2. By the time of a marshal’s swearing in, the marshal has accepted employment implicating a prior employment decision and action by the Council.

Based on the information provided, it appears that the Council took final action outside of a public meeting and merely ratified it at a later public meeting. Hiring a town marshal constitutes final action under the ODL, which must take place at a meeting open to the public.

## **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Milltown Town Council violated the Open Door Law by not providing public notice to the media of two executive sessions and by taking final action on hiring a town marshal outside of a public meeting.

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

**Luke H. Britt**  
**Public Access Counselor**